

## **REMARKS**

Reconsideration and withdrawal of the rejections of the application respectfully requested in view of the remarks herewith, which place the application in condition for allowance.

### **I. Status Of Claims And Formal Matters**

Claims 1-56 are pending in this application. Claims 29, 30, 32-41 and 45-56 have been cancelled without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents. Applicants reserve the right to pursue the subject matter of the cancelled claims in continuation applications. Claims 1, 42 and 44 have been amended. New claims 57 and 58 have been added. No new matter has been added.

Claims 1, 57 and 58 recite transferrin in the cell growth medium. Support is found on page 34, lines 12-18 and page 35, lines 4-6 of the specification as originally filed. No new matter has been added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

### **II. The Rejections Under 35 U.S.C. §112, Second Paragraph, Are Overcome**

Claims 42 and 44 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. In response, Claims 42 and 44 have been clarified, thereby obviating the rejection.

Reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph, are respectfully requested.

### **III. The Rejections Under 35 U.S.C. §103 Are Overcome**

Claims 1-28, 31 and 42-44 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Crouch et al. (Journal of Immunological Methods, 160:81-88 (1993)) in view of Bell et al. (US 2002/0120098 A1). The Examiner alleges that Crouch discloses an ATP bioluminescence assay method for determining the proliferative status of primitive hematopoietic cells. The Examiner also alleges that Bell teaches a culture growth media composition having 30% fetal bovine serum, 0.8% methyl cellulose and in an atmosphere having about 5% oxygen

and that one of ordinary skill in the art would have been motivated to incorporate the culture system of Bell for subsequent use in the ATP bioluminescence assay taught by Crouch. Applicant respectfully disagrees.

Claim 1 recites a high-throughput assay method for rapidly determining the proliferative status of a population of primitive hematopoietic cells, the method comprising the steps of: (a) incubating a cell population comprising primitive hematopoietic cells in a cell growth medium comprising fetal bovine serum having a concentration of between 0% and 30% and methyl cellulose having a concentration of between about 0.4% and about 0.7%, and transferrin and in an atmosphere having between about 3.5% oxygen and 7.5% oxygen; (b) contacting the cell population with a reagent capable of generating luminescence in the presence of ATP; and (c) detecting luminescence generated by the reagent contacting the cell population, the level of luminescence indicating the amount of ATP in the cell population, wherein the amount of ATP indicates the proliferative status of the primitive hematopoietic cells.

There is no teaching or suggestion of a cell growth medium with transferrin in Crouch or Bell. Nor is there any motivation in Crouch or Bell to add transferrin any of the cell cultures disclosed therein. Bell concerns transferrin receptors as cell surface markers which are not the same as the transferrin of claim 1.

Reconsideration and withdrawal of the rejections under 35 U.S.C. § 103 are respectfully requested.

**REQUEST FOR INTERVIEW**

If any issue remains as an impediment to allowance, a further interview with the Examiner and SPE are respectfully requested; and, the Office Action is additionally requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

**CONCLUSION**

In view of the remarks herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,  
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